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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/735,098

12/12/2003

Annika Margareta Pettersson-Fernholm

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GLAXOSMITHKLINE

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EXAMINER

GRASER, JENNIFER E

ART UNIT

PAPER NUMBER

1645

DATE MAILED: 07/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/735,098

Applicant(s)

PETTERSSON-FERNHOLM ET AL.

Examiner

Jennifer E. Graser

Art Unit

1645

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 35-50 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 35-50 are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

**DETAILED ACTION**

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claim(s) 35-39 and 53, drawn to isolated polynucleotides, host cells and recombinant methods. NOTE: Applicants must elect a single sequence form SEQ ID Nos: 1, 3, 5, 7 and 9. This is a Restriction, not a species election because each sequence represents a different product, classified in class 536, subclass 23.7.

II. Claim (s) 40-42, 45-49 and 54, drawn to isolated polypeptides and vaccines/methods comprising said polypeptides. NOTE: Applicants must elect a single sequence form SEQ ID Nos: 2, 4, 6, 8 and 10. This is a Restriction, not a species election because each sequence represents a different product, classified in class 530, subclass 350.

III. Claim(s) 43, 51, 52 and 55, drawn to isolated antibodies and a kit comprising said antibodies. NOTE: Applicants must elect a single antibody immunospecific for a polypeptide sequence form SEQ ID Nos: 2, 4, 6, 8 and 10. This is a Restriction, not a species election because each sequence represents a different product , classified in class 530, subclass 387.1.

IV. Claim(s) 44, drawn to a method for identifying compounds through the use of a polypeptide. NOTE: Applicants must elect a single sequence form SEQ ID Nos:2, 4, 6, 8 and 10. This is a Restriction, not a species election

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because each sequence represents a different product, classified in class 435, subclass 7.1.

V. Claim 50, drawn to a method of vaccinating using a polynucleotide, classified in class 424, subclass 234.1. NOTE: Applicants must elect a single sequence from SEQ ID Nos: 1, 3, 5, 7 and 9. This is a Restriction, not a species election because each sequence represents a different product.

2. The inventions are distinct, each from the other because of the following reasons:

The inventions of Groups I, II and III contain products which are biologically, chemically and structurally different from one another and therefore are patentably distinct and independent inventions. It would place an undue burden on the Examiner to examine all of these inventions simultaneously.

Additionally, the individual Groups each contain many different inventions within their Group. For example, the nucleic acids of Group I contain completely different nucleotide sequences which encode completely different polypeptides of very different sizes and immunogenic properties. So, as stated in the Groups above, Applicants must also elect a single product from each Group for examination.

Inventions II and IV are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the

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instant case the polypeptide of Group II may be used for purposes other than detection. For instance, it may be used as an immunogen to raise antibodies and/or to treat disease.

Inventions I and V are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the polynucleotide of Group II may be used for purposes other than as an immunogen in a method of vaccination. For example, it may be used in a detection assay or in recombinant protein production methods.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification and their recognized divergent subject matter and because the literature search required for the Groups is not coextensive, restriction for examination purposes as indicated is proper.

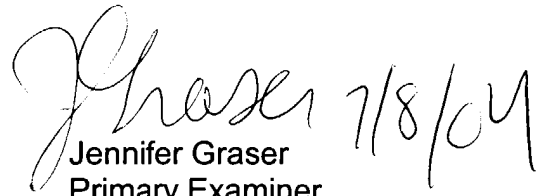
3. Correspondence regarding this application should be directed to Group Art Unit 1645. Papers related to this application may be submitted to Group 1600 by facsimile transmission. Papers should be faxed to Group 1600 via the PTO Fax Center located in Remsen. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The Group 1645 Fax number is (703) 872-9306 which is able to receive transmissions 24 hours/day, 7 days/week.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Graser whose telephone number is (571) 272-0858. The examiner can normally be reached on Monday-Friday from 7:00 AM-4:30 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette Smith, can be reached on (571) 272-0864.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (571) 272-0500.

  
Jennifer Graser  
Primary Examiner  
Art Unit 1645